

ESTTA Tracking number: **ESTTA658640**

Filing date: **03/02/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219982
Party	Defendant Stacy Lee Huggins
Correspondence Address	TREVOR P SCHMIDT HUTCHISON PLLC 3110 EDWARDS MILL ROAD, SUITE 300 RALEIGH, NC 27612 UNITED STATES tmgroup@hutchlaw.com, tschmidt@hutchlaw.com
Submission	Other Motions/Papers
Filer's Name	Trevor P. Schmidt
Filer's e-mail	tschmidt@hutchlaw.com
Signature	/Trevor P. Schmidt/
Date	03/02/2015
Attachments	Motion_for_Relief.pdf(17555 bytes ) Ex A - Copy of Express Abandonment.pdf(25397 bytes ) Ex B - Copy of 3PMC Application.pdf(422648 bytes )

In the matter of Trademark  
Application Serial No. 86/033,388  
Filing Date: August 9, 2013  
Mark: 'COKE HEAD  
Published for Opposition: September 2, 2014

# Opposition No. 91219982

1. Applicant filed an application to register the ‘COKE HEAD mark, Serial No. 86/033,388, which was published for opposition on September 2, 2014.
2. 3PMC, LLC (hereinafter “3PMC”) filed a thirty day request for extension of time to oppose on October 1, 2014 and an additional sixty day request for extension of time on October 31, 2014.
3. On December 31, 2014, prior to the initiation of any opposition against the application to register the ‘COKE HEAD mark, Applicant filed an express abandonment of his application. Applicant is submitting herewith as **Exhibit A**, a printout of the Request for

Express Abandonment from the USPTO's TSDR system. The TEAS Stamp on the Request for Express Abandonment clearly indicates that the request was filed on December 31, 2014 at 09:10:24 EST.

4. After Applicant filed his Request for Express Abandonment, 3PMC filed a Notice of Opposition. Although the Notice of Opposition itself does not include a time stamp indicating exactly when it was filed, it claims as a basis for opposition 3PMC's application to register the 'COKE HEAD mark, Serial No. 86/493,498. As the printout from the USPTO's TSDR system shows, attached here as **Exhibit B**, the TEAS Stamp for 3PMC's application indicates that it was filed on Wednesday, December 31, 2014 at 14:35:30 EST, over five hours after Huggins filed his abandonment. Also included at Exhibit B is a copy of 3PMC's Notice of Opposition in which it claims application Serial No. 86/493,498 as basis for its opposition.

5. On February 28, 2015, the Board entered judgment against Applicant on the basis that Applicant was a party to an *inter partes* proceeding and withdrew his application without the written consent of every adverse party. Applicant believes that given the timing of the filing of the abandonment and 3PMC's Notice of Opposition, this judgment should not have been entered and 3PMC's opposition should have been dismissed as a nullity.

### **ARGUMENT**

If an applicant files an express abandonment of an application that is the subject of a granted request for extension of time to oppose and no opposition has yet been filed, the application stands abandoned and the abandonment is without prejudice. *See* 37 C.F.R. 2.68; TBMP §218. Any opposition filed on or after the filing date of the abandonment will not be considered. TBMP §218. If the opposition was instituted prior to the Board's knowledge of the

filing of an express abandonment, the opposition will be dismissed as a nullity and the opposition fees will be refunded to the opposer. *Id.* The written consent of an adverse party to an abandonment is only required after the commencement of an opposition proceeding. TBMP §602.01.

In this instance, Huggins filed an express abandonment while his application was subject to a granted request for extension of time to oppose but before the initiation of any opposition. The time stamps associated with Huggins' express abandonment and the timing of 3PMC's filings clearly establish that the express abandonment occurred prior to the filing of the Notice of Opposition. Consequently, 3PMC's consent was not required for the express abandonment and its opposition should be treated as a nullity because it was filed against an already abandoned application.

The Board may relieve a party from a final judgment or order, for among other reasons, mistake, inadvertence, if the judgment is void or for any other reason that justifies relief. Fed. R. Civ. P. 60(b); TBMP §544. Applicant believes, given the timing of the filings made by the respective parties, as shown in the attached evidence, that the Board's judgment was issued by mistake or inadvertence, or alternatively that the judgment was void because it issued in an opposition that was commenced against a previously abandoned application.

WHEREFORE, in light of the foregoing, Applicant respectfully requests that the Board's judgment against Applicant be withdrawn, Applicant's application be acknowledged as being abandoned without prejudice and that 3PMC's opposition be dismissed as a nullity.

Dated: March 2, 2015

Respectfully submitted,

By: /Trevor P. Schmidt/  
Trevor P. Schmidt  
Hutchison PLLC  
3110 Edwards Mill Road, Suite 300  
Raleigh, North Carolina 27612  
Tel. (919) 828-4296  
Fax (844) 397-8265

*Attorney for Applicant*  
*Stacy Lee Huggins*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **MOTION FOR RELEF FROM FINAL JUDGMENT** was served via First Class Mail to counsel of record for 3PMC, LLC:

Matthew J. Schonauer  
Standley Law Group LLP  
6300 Riverside Drive  
Dublin, OH 43017  
[mschonauer@standleyllp.com](mailto:mschonauer@standleyllp.com)

this 2nd day of March, 2015.

/Trevor P. Schmidt/  
\_\_\_\_\_  
Trevor P. Schmidt  
*Attorney for Applicant*

# **EXHIBIT A**

## Request for Express Abandonment

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86033388
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 110
<b>PUBLISH FOR OPPOSITION DATE</b>	09/02/2014
<b>MARK SECTION</b>	
<b>MARK</b>	'COKE HEAD
<b>REQUEST FOR EXPRESS ABANDONMENT SECTION</b>	
<b>STATEMENT</b>	The applicant hereby expressly abandons the application for trademark registration made under the serial number identified above.
<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/Trevor P. Schmidt/
<b>SIGNATORY NAME</b>	Trevor P. Schmidt
<b>SIGNATORY DATE</b>	12/31/2014
<b>SIGNATORY POSITION</b>	Attorney of Record, North Carolina Bar Member
<b>SIGNATORY PHONE NUMBER</b>	919-829-4296
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Wed Dec 31 09:10:24 EST 2014
<b>TEAS STAMP</b>	USPTO/REA-204.16.137.171- 20141231091024410190-8603 3388-50055501e6143bed88c5 2cb1739ad7c26139879152423 f48a902261e3a7fcec-N/A-N /A-20141231090713986216



## Request for Express Abandonment

To the Commissioner for Trademarks:

**MARK:** 'COKE HEAD

**SERIAL NUMBER:** 86033388

By submission of this request, the applicant hereby expressly abandons the application for trademark registration made under the serial number identified above. Except as provided in 37 C.F.R Section 2.135. (concerning the commencement of an opposition, concurrent use, or interference proceeding), the fact that an application has been expressly abandoned shall not, in any proceeding in the United State Patent and Trademark Office, affect any right that the applicant may have in the mark which is the subject of the abandoned application.

Signature: /Trevor P. Schmidt/ Date: 12/31/2014

Signatory's Name: Trevor P. Schmidt

Signatory's Position: Attorney of Record, North Carolina Bar Member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 86033388

Internet Transmission Date: Wed Dec 31 09:10:24 EST 2014

TEAS Stamp: USPTO/REA-204.16.137.171-201412310910244

10190-86033388-50055501e6143bed88c52cb17

39ad7c26139879152423f48a902261e3a7fcec-

N/A-N/A-20141231090713986216

# **Exhibit B**

# Trademark/Service Mark Application, Principal Register

Serial Number: 86493498

Filing Date: 12/31/2014

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86493498
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="#">'coke head</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	'coke head
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	3PMC, LLC
<b>*STREET</b>	25 Lighthouse Road
<b>*CITY</b>	Ocracoke
<b>*STATE</b> (Required for U.S. applicants)	North Carolina
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	27960
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	limited liability company
<b>STATE/COUNTRY WHERE LEGALLY ORGANIZED</b>	North Carolina
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	025
	Apparel, namely, shirts, sweatshirts, pullover sweatshirts,

<b>*IDENTIFICATION</b>	hooded sweatshirts, tank tops, athletic tank tops, t-shirts, long-sleeved shirts, short-sleeved shirts, aprons, and bibs for babies; Head wear, namely, hats and visors
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 06/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 09/15/2012
<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT 16\864\934\86493498\xml1\ APP0003.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT 16\864\934\86493498\xml1\ APP0004.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT 16\864\934\86493498\xml1\ APP0005.JPG</a>
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	<a href="#">\\TICRS\EXPORT16\IMAGEOUT 16\864\934\86493498\xml1\ APP0010.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT 16\864\934\86493498\xml1\ APP0011.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT 16\864\934\86493498\xml1\ APP0012.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	The specimens consist of digital photographs of various articles bearing the mark as currently offered for sale by the Applicant.
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Matthew J. Schonauer
<b>ATTORNEY DOCKET NUMBER</b>	3PM2832-002
<b>FIRM NAME</b>	Standley Law Group LLP
<b>STREET</b>	6300 Riverside Drive
<b>CITY</b>	Dublin

<b>STATE</b>	Ohio
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	43017
<b>PHONE</b>	6147925555
<b>FAX</b>	6147925536
<b>EMAIL ADDRESS</b>	trademarks@standleyllp.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Jeffrey S. Standley
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Matthew J. Schonauer
<b>FIRM NAME</b>	Standley Law Group LLP
<b>STREET</b>	6300 Riverside Drive
<b>CITY</b>	Dublin
<b>STATE</b>	Ohio
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	43017
<b>PHONE</b>	6147925555
<b>FAX</b>	6147925536
<b>EMAIL ADDRESS</b>	trademarks@standleyllp.com;mschonauer@standleyllp.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Mary-Chandler Storrs/
<b>SIGNATORY'S NAME</b>	Mary-Chandler Storrs
<b>SIGNATORY'S POSITION</b>	Principal

<b>DATE SIGNED</b>	12/31/2014
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## Trademark/Service Mark Application, Principal Register

**Serial Number: 86493498**

**Filing Date: 12/31/2014**

### To the Commissioner for Trademarks:

**MARK:** 'coke head (Standard Characters, see [mark](#))

The literal element of the mark consists of 'coke head.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, 3PMC, LLC, a limited liability company legally organized under the laws of North Carolina, having an address of

25 Lighthouse Road  
Ocracoke, North Carolina 27960  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Apparel, namely, shirts, sweatshirts, pullover sweatshirts, hooded sweatshirts, tank tops, athletic tank tops, t-shirts, long-sleeved shirts, short-sleeved shirts, aprons, and bibs for babies; Head wear, namely, hats and visors

In International Class 025, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 06/15/2008, and first used in commerce at least as early as 09/15/2012, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) The specimens consist of digital photographs of various articles bearing the mark as currently offered for sale by the Applicant..

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

[Specimen File5](#)

[Specimen File6](#)

[Specimen File7](#)

[Specimen File8](#)

[Specimen File9](#)

[Specimen File10](#)

The applicant's current Attorney Information:

Matthew J. Schonauer and Jeffrey S. Standley of Standley Law Group LLP  
6300 Riverside Drive  
Dublin, Ohio 43017  
United States

The attorney docket/reference number is 3PM2832-002.

The applicant's current Correspondence Information:

Matthew J. Schonauer  
Standley Law Group LLP  
6300 Riverside Drive  
Dublin, Ohio 43017  
6147925555(phone)  
6147925536(fax)  
trademarks@standleyllp.com;mschonauer@standleyllp.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /Mary-Chandler Storrs/ Date: 12/31/2014  
Signatory's Name: Mary-Chandler Storrs  
Signatory's Position: Principal  
RAM Sale Number: 86493498  
RAM Accounting Date: 01/02/2015

Serial Number: 86493498  
Internet Transmission Date: Wed Dec 31 14:35:30 EST 2014  
TEAS Stamp: USPTO/BAS-24.123.129.178-201412311435308  
63594-86493498-500b18bbc10182ffefe94ba93



8bf17777cbe9739f85bfb9e6940d82a2ad01ac69  
2-DA-2294-20141231142401679925

'coke head













Ocracoke Island, NC  
833-6.07 / 175-57. no.











ESTTA Tracking number: **ESTTA647839**

Filing date: **12/31/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	3PMC, LLC
Granted to Date of previous extension	12/31/2014
Address	25 Lighthouse Road Ocracoke, NC 27960 UNITED STATES
Attorney information	Matthew J. Schonauer Standley Law Group LLP 6300 Riverside Drive Dublin, OH 43017 UNITED STATES trademarks@standleyllp.com,mschonauer@standleyllp.com Phone:6147925555

### Applicant Information

Application No	86033388	Publication date	09/02/2014
Opposition Filing Date	12/31/2014	Opposition Period Ends	12/31/2014
Applicant	Huggins, Stacy Lee 3930 Garden Road Richmond, VA 23235 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. First Use: 2012/08/13 First Use In Commerce: 2012/08/13  
All goods and services in the class are opposed, namely: T-shirts; Tee shirts

### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86493498	Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	

Attachments	Opposition.pdf(34065 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matthew J. Schonauer/
Name	Matthew J. Schonauer
Date	12/31/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/033,388  
Filed on 31 December 2014  
For the Mark ‘COKE HEAD  
Published in the Official Gazette (Trademarks) on 2 September 2014

3PMC, LLC  Opposer,  v.  Stacy Lee Huggins  Applicant.	Opposition No. _____
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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

Dear Commissioner:

In the matter of U.S. Trademark Application Serial No. 86/033,388, filed August 9, 2013 by Stacy Lee Huggins (“Applicant”), to register the mark ‘COKE HEAD in connection with “T-shirts; Tee shirts” in International Class 25, and published in the Official Gazette on September 2, 2014, 3PMC, LLC (“Opposer”) believes that it will be damaged by registration of Applicant’s application and hereby opposes the same pursuant to 15 U.S.C. § 1063. As grounds for opposition it is alleged:

1. Applicant is the record owner of U.S. Trademark Application Serial No. 86/033,388 for the mark ‘COKE HEAD for use in connection with “T-shirts; Tee shirts” goods (“Applicant’s Goods”) in International Class 25.

2. Opposer is a limited liability company organized and operating under the laws of the State of North Carolina and having a principal place of business at 25 Lighthouse Road, Ocracoke, North Carolina, 27960.

3. Opposer is the owner of U.S. Trademark Application Serial No. 86/493,498 for the mark 'COKE HEAD for use in connection with "Apparel, namely, shirts, sweatshirts, pullover sweatshirts, hooded sweatshirts, tank tops, athletic tank tops, t-shirts, long-sleeved shirts, short-sleeved shirts, aprons, and bibs for babies; Head wear, namely, hats and visors" goods ("Opposer's Goods") in International Class 25.

4. Applicant's application contains the statement that "the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 08/13/2012, and first used in commerce at least as early as 08/13/2012, and is now in use in such commerce." The application also contains a declaration as to the truth of applicant's statements in the application.

5. Upon information and belief, Applicant did not use the 'COKE HEAD mark in connection with the Applicant's Goods in commerce on or any time prior to at least September 15, 2012, the date of first use in commerce by Opposer.

6. Upon information and belief, Applicant made false statements as to his use of the mark in commerce and the dates of first use with the intent to procure a registration to which Applicant was not entitled.

7. Upon information and belief, Applicant's false statements were made knowingly. Applicant made knowing false statements as to the use of his mark in commerce and the dates of first use of that mark with the intent to procure a registration to which Applicant was not entitled.



8. Applicant's application also contains a specimen of use and the statement that "The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services."
9. Upon information and belief, the alleged specimen provided by Applicant was not in use in commerce at least as early as the filing date of Applicant's application.
10. In response to an Office Action, Applicant submitted a substitute specimen on July 4, 2014 along with a statement that "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application."
11. Upon information and belief, the alleged substitute specimen provided by Applicant was not in use in commerce at least as early as the filing date of Applicant's application.
12. Upon information and belief, the alleged substitute specimen provided by Applicant was not in use in commerce by or on behalf of Applicant.
13. Upon information and belief, Applicant made the false statements as to the use of the specimens with the intent to procure a registration to which Applicant was not entitled.
14. Upon information and belief, Applicant's false statements were made knowingly. Applicant made knowing false statements as to the use of the specimens with the intent to procure a registration to which Applicant was not entitled.
15. Applicant's application also contains the declarations by Applicant, including that "he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely,

when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

16. Upon information and belief, Applicant was aware, as of August 9, 2013, of Opposer’s right to use the ‘COKE HEAD mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of Opposer, to cause confusion, or to cause mistake, or to deceive.

17. Upon information and belief, Applicant made the false statements as to Opposer’s right to use the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

18. Upon information and belief, Applicant’s false statements were made knowingly. Applicant made knowing false statements as to Opposer’s right to use the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

19. Upon information and belief, Applicant did not have a genuine belief, as of August 9, 2013, that he was the owner of the ‘COKE HEAD mark sought to be registered.

20. Upon information and belief, Applicant made the false statements as to his ownership of the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

21. Upon information and belief, Applicant’s false statements were made knowingly. Applicant made knowing false statements as to his ownership of the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

22. Applicant was successful in procuring favorable examination, allowance and publication of the application as a result of having made any or all of the aforementioned false statements.

23. Applicant's application was filed, allowed and published based solely on Applicant's alleged actual use of the 'COKE HEAD mark in commerce. Upon information and belief, Applicant has not made bona fide use in commerce at any time prior to or on the filing date of the application. Applicant's application is therefore void and invalid for lack of a filing basis.

24. In the alternative, upon information and belief, if Applicant had made any use in commerce of the 'COKE HEAD mark prior to or on the filing date of the application, such use was not a bona fide use in commerce, and was further unlawful as unauthorized use of Opposer's mark. Applicant's application is therefore void and invalid for lack of a filing basis.

25. At least by virtue of Applicant's failure to use the 'COKE HEAD mark in commerce on or before September 15, 2012, Opposer has senior rights in said mark and priority in use.

26. Applicant's mark so resembles a mark or trade name previously used in the United States by Opposer and not abandoned, as to be likely, when used on or in connection with the goods of Applicant, to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer requests that the Board sustain Opposer's opposition of U.S. Trademark Application Serial No. 86/033,388 and deny registration thereof.

Respectfully submitted,

Date: 31 December 2014

/s/ Matthew J. Schonauer  
\_\_\_\_\_  
Matthew J. Schonauer (OH #0086361)  
Jeffrey S. Standley (OH #0047248)  
Standley Law Group LLP  
6300 Riverside Drive  
Dublin, Ohio 43017  
Tel. 614.792.5555  
Fax. 614.792.5536  
Email. litigation@standleyllp.com  
jstandley@standleyllp.com  
mschonauer@standleyllp.com

*Attorneys for Opposer 3PMC, LLC*

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via regular U.S. Mail this 31st day of December, 2014 upon the following attorney of record:

Trevor P. Schmidt  
Hutchison PLLC  
3110 Edwards Mill Road, Suite 300  
Raleigh, North Carolina 27612

/s/ Matthew J. Schonauer  
Matthew J. Schonauer